IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE.

WRIT PETITION NO. 2930 OF 2001

Mukundrao Ragho Bhamre and ors..... Petitioner.

versus

Satana Municipal Council and ors..... Respondents.

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Shri S.S. Kulkarni for the petitioners.
Mrs. S.S. Bendhe AGP for the State - respdts. 2 to 5.

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CORAM ; V.G.PALSHIKAR &
MRS. RANJANA DESAI, JJ.

DATED; 23RD AUGUST, 2004.

P.C.;

1. By this petition, the petitioner has impugned the Resolution passed by the Municipal Council on 5-7-1999. The petitioner has a remedy of challenging the execution of this Resolution itself under section 308 of the Municipalities Act. However the petitioner has chosen to file a writ petition in this court for exercising writ jurisdiction of this court. At the time when the petition was taken up for final hearing, a querry was made by the court as to why alternate remedy under section 308 is not availed by the petitioner. Several judgments were cited pointing out that where the objection for alternate remedy is not

raised at the time of admission and substantial period is lost during the pendency, the courts should not require the petitioner to take other alternate remedy. Judgments were also cited stating that alternate remedy is not a bar in every case.

2. The purpose of rule of prudence laid down by the Supreme Court of India in 1954 regarding observance of alternate remedy approaching this Court under Article 226 is based on the sound principles of logic. The alternate remedy in fact is one under Article 226 basic statutory of remedy or remedies which should be followed and on failure to get any relief thereunder that this Court can be approached under Article 226 vice-versa is not the rule. The High Court is therefore right in insisting upon a litigant to approach the statutory authority for other remedy available before requiring exercise of jurisdiction under Article 226. The present case in hand is the best example of a case where the remedy of truth or statutory appeal is better and efficacious than that available in writ jurisdiction.

3. On 1-4-1997 Government of Maharashtra issued a Notification redressing the schedule of water tarrif as contemplated by section 108(f) read with 323 of the Municipalities Act. On 9-9-1998 the Muncipal Council

passed a Resolution saying that it is not necessary to amend the model bye-laws, since there is no water supply which is basic requirement of section 108(f). By Resolution of 14-10-1998 the consideration was postponed as the Resolutionn of 9-9-1998 could not be meritted within three months. Thereafter the matter was taken up on 23rd March 1999 and the Resolution to implement the amendment was passed. The communication requiring implementation of the Resolution was received. On 5-7-1999 the amendments were accepted. It is this Resolution of 5-7-1999 which accepts the amendment, is challenged before this court by writ petition, directly contending that this Resolution is illegal for non-observance of the conditions mentioned in section 108(f) and sections 323 and 323 of the Municipalities Act, hence the same is liable to be struck down.

4. Section 308 (1) of the Municipalities Act reads thus:

> "If, in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or

is against public interest or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execusion or prohibit the doing thereof.

5. The Collector can under his power consider any order or Resolution of a council and if it is unlawful, then he may by an order in writing prohibit the implementation thereof. In the present case therefore the citizens of Satana Municipal Council want a direction prohibiting the municipal council for giving effect to the Resolution dated 5-7-1999 as it violates the requirement of section 108 (f) and 322 and 323 of the Municipalities Act. It is thus a claim of the petitioner that the Resolution is illegal for violation of this provition. There is nothing in the language of section 108 to prohibit the Collector from doing so. Reliance is placed on a direction of the Collector issued earlier, whereby the Collector is said to have required the municipality to effect the amendment as a condition precedent, to granting of the budget of the municipality concerned. Assuming that this is a direction, threatening municipality to do something it cannot by any stretch of imagination, be read as an amendment to do something even if it is illegal. There is nothing preventing the petitioner from approaching Collector under section 308, and point out to him that

the Resolution dated 5-7-1999 being violative of the provisions, is liable to be struck down or its implementation be prohibited. It is for such purpose that alternate remedy is created and tried to be insisted upon by the court.

6. In view of the above position reserving the petitioner the right to take proceedings under section 308, the petition is dismissed. In the event such application under section 308 is moved by the petitioner, the Collector shall decide it in accordance with the law on merits and shall not take objection of limitation when factually section 308 does not speak of any limitation. This court is competent to issue such directions in view of the judgment of the Supreme Court in (1996) VI SCC page 199. Petition accordingly dismissed.

7. Parties to act on an authenticated copy of this order.

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